

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOJO EJONGA-DEOGRACIAS,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,  
LEON N. KERSHAW, CAROLEE ROOP,

Defendants.

CASE NO. C15-5784 RJB-KLS

ORDER DENYING PLAINTIFF'S  
MOTION FOR PRESERVATION OF  
EVIDENCE

Plaintiff JoJo Ejonga-Deogracias is a state prisoner proceeding *pro se* and *in forma pauperis* in this 42 U.S.C. § 1983 civil rights action. On November 23, 2015, Plaintiff filed a motion seeking the preservation of evidence relevant to the claims in this action. Dkt. 13.

“[A]s soon as a potential claim is identified, a litigant is under a duty to preserve evidence which it knows or reasonably should know is relevant to the action.” *National Ass'n of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 566-67 (N.D.Cal.1987)). A motion to preserve evidence requires the court to consider “1) the level of concern the court has for the continuing existence and maintenance of the integrity of the evidence in question in the absence of an order directing preservation of the evidence; 2) any irreparable harm likely to result to the party seeking the preservation of evidence absent an order directing preservation; and 3) the capability

1 of an individual, entity, or party to maintain the evidence sought to be preserved, not only as to  
2 the evidence's original form, condition or contents, but also the physical, spatial and financial  
3 burdens created by ordering the evidence preservation.” *Capricorn Power County, Inc. v.*  
4 *Siemens Westinghouse Power Corporation*, 220 F.R.D. 429 (2004).

5 Plaintiff’s motion is premature. At this juncture in the lawsuit, defendants have been  
6 served and filed waivers of service, but have not yet filed an answer or motion responsive to  
7 Plaintiff’s complaint. After defendants have made an appearance in this action, by filing either  
8 an answer or a motion responsive to plaintiff’s complaint, Plaintiff may renew his motion, taking  
9 care to make the requisite showing set forth in the preceding paragraph.

10 Accordingly, it is **ORDERED**:

- 11 1. Plaintiff’s motion (Dkt. 13) is premature and is **DENIED without prejudice**.  
12 2. The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.

13 Dated this 21st day of December, 2015.

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16 Karen L. Strombom  
17 United States Magistrate Judge  
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